

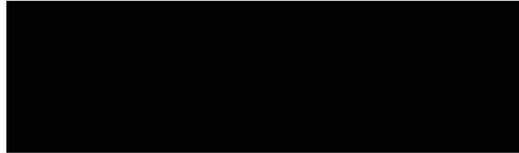
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ)
(CDJ 2004 800 017 relates)

Date: OCT 28 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with his wife and child in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated January 22, 2007.

The record contains, *inter alia*: two affidavits from the applicant's wife, [REDACTED] a letter from [REDACTED] physician; a letter from the couple's child's physician; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who -

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of

admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In this case, the district director found, and the applicant does not contest, that the applicant entered the United States in April 1999 without inspection and remained until January 2006. The applicant accrued unlawful presence for six years. He now seeks admission within ten years of his 2006 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These factors include: the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

In this case, the applicant's wife, [REDACTED], states that she has lived in the United States for as long as she can remember. She states she has been diagnosed with severe depression since her husband departed the country and that she takes several medications and pain killers for depression and nausea. [REDACTED] states that "[i]t has gotten so bad that it is very difficult for [her] to get to her job and it is getting harder for [her] to take care of [her] son on [her] own." [REDACTED] claims she has not been able to work full-time and that her mother and sister-in-law are helping her take care of her son. [REDACTED] claims she does not want to go on with her life and wants to disappear so that her problems would go away. [REDACTED] states that without her mother's help, she would have tried to take her life. [REDACTED] claims she wants to start feeling alive again and not have suicidal thoughts anymore. In addition, [REDACTED] states her son has bronchitis and asthma. She states that the two times she has taken him to Mexico, her son has gotten "terribly ill." [REDACTED] contends her son's lungs "had fluid when he was born and it was not drained." She states she "take[s] him to get shots for his bronchitis and for breathing treatments when it starts getting cold and when it is too hot." [REDACTED] contends she cannot move to Mexico with her son because he needs medical attention, jobs are scarce, and her son, a U.S. citizen, has a right to an education in the United States. Furthermore, [REDACTED] contends the applicant was a "model citizen" when he lived in the United States, never even getting a parking ticket. *Affidavits of* [REDACTED] dated February 22, 2007, and January 13, 2006.

A letter from [REDACTED] physician states that [REDACTED] has been going through difficult times this past year since her husband's deportation. [REDACTED] physician states that [REDACTED] feels overwhelmed and that he is treating her for severe depression. *Letter from [REDACTED] dated January 26, 2007.* A letter from the same physician states that the couple's son has been seen for "ear infections, allergies and multiple visits for bronchitis[, that he] takes medicine for asthma[, and] shows signs and symptoms of an asthmatic, but he needs further testing to diagnose that." *Letter from [REDACTED] dated March 1, 2007.*

After a careful review of the evidence, there is insufficient evidence to show that [REDACTED] has suffered or will suffer extreme hardship if her husband's waiver application were denied.

The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. However, if [REDACTED] decides to stay in the United States, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported).

Although the record indicates [REDACTED] has been diagnosed with severe depression, the letter from her physician fails to describe the severity, prognosis, and treatment [REDACTED] requires. For instance, although [REDACTED] contends she is suicidal and takes several medications and pain killers for depression and nausea, *Affidavit of [REDACTED] supra*, [REDACTED] physician's letter does not mention any prescription medications, pain killers, nausea, or suicidal tendencies. *Letter from [REDACTED] dated January 26, 2007.* There is no indication [REDACTED] has sought any mental health counseling or treatment, and there are no letters from friends or family, such as [REDACTED] mother or sister-in-law, describing the extent of [REDACTED] depression. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical or mental health condition or the treatment and assistance needed.

Similarly, although [REDACTED] contends her son has bronchitis and asthma, and that he gets shots for his bronchitis and requires breathing treatments, the letter from her son's physician fails to describe with any specificity the severity, prognosis, and treatment [REDACTED] son requires. Rather, [REDACTED] son's physician states only that her son "takes medicine for asthma" and "needs further testing to diagnose" asthma. *Letter from [REDACTED] dated March 1, 2007.* Moreover, although [REDACTED]

claims her son became ill both times she took him to Mexico, she failed to specify how her son became ill or whether she sought treatment for him in Mexico.

In addition, [REDACTED] claim that she cannot move back to Mexico, where she was born, because her son needs medical attention, jobs are scarce, and her son has a right to an education in the United States does not rise to the level of extreme hardship based on the record. As described above, [REDACTED] son has not been diagnosed with asthma and there is no evidence he requires on-going medical treatment in the United States. Even assuming [REDACTED] experiences some financial hardship due to the scarcity of jobs in Mexico, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

Finally, to the extent [REDACTED] makes a financial hardship claim, the AAO notes that there are no tax or financial documents in the record whatsoever. Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.